

Fair Political Practices Commission

Memorandum

To: Chairman Randolph, Commissioners Blair, Huguenin, Leidigh, and Remy

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: Emergency Adoption of:

- Regulation 18531.62: Elected State Officeholder Bank Accounts, Committees, and Reporting.
- Regulation 18531.63: Elected State Officeholder Contribution Aggregation.
- Regulation 18531.64: Winding Down Elected State Officer, Officeholder Committees.
- Amendment, Regulation 18544: Biennial adjustments.

Date: December 22, 2006

I. Executive Summary

In 2006, Senate Bill 145 took effect as urgency legislation. SB 145 (Stats. 2006, Ch. 624, urgency) amended the “net debt” provision (section 85316) of the Political Reform Act (the “Act”).¹ The net debt provision prohibits post-election fundraising for any purpose other than to pay net debt. This rule, while not expressly prohibiting officeholders from using campaign committees to raise funds to pay officeholder expenses, prohibited fundraising in campaign accounts for such purposes after an election. Thus, unless the officeholder had a significant amount of excess campaign funds after an election, the officeholder would be required to pay officeholder expenses from a campaign account for a future election to that same office. More importantly, officeholders who were termed out and had no other campaign committees for future office had no method of raising officeholder funds or paying officeholder expenses.

SB 145 allows the establishment of a separate officeholder account for officeholder expenses. Additionally, SB 145 requires that:

- Contributors and elected state officers are subject to calendar year contribution limits.
- Elected state officers are subject to aggregate contribution limits on a calendar year basis.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18997, of the California Code of Regulations.

- Contributions received for officeholder purposes are cumulated with contributions to the officeholder's election to any state office that he or she may seek during the term of office to which he or she is currently elected, including reelection to the office he or she currently holds.
- The contribution limitations will be adjusted in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index (rounded to the nearest \$100).
- None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

In an effort to quickly implement the new statutory language, staff held an interested persons meeting on November 15, 2006. Proposed regulations 18531.62, 18531.63, 18531.64 and the proposed amendment to regulation 18544 were developed in consideration of the public comment, as well as internal comments, and are being presented as emergency regulations to interpret the urgency amendments to section 85316 made by SB 145.

II. Introduction and Background: A Brief History of Officeholder Accounts

To better understand the proposed regulations implementing the new officeholder account statute, it is useful to look back at the treatment of officeholder expenses under the various past amendments to the Act that make up the legal landscape into which the new statute and regulations are being inserted.

A. Proposition 73: The End of Separate Officeholder Accounts

In June 1988, Proposition 73 was approved by the voters as amendments to the Act. Among other things, Proposition 73 enacted section 85201,² which required that all contributions or loans made to a candidate,³ or to the candidate's controlled committee, be deposited into a single campaign bank account. This section came to be known as the "one-bank-account" rule. Prior to this time, candidates were not limited to any specific number of bank accounts. For example, in San Francisco, candidates maintained "friends committees" to raise funds for officeholder purposes. These were permissible additional committees and accounts. (See generally, *Riddle* Advice Letter, No. 89-016.) Proposition 73 changed this by mandating the following:

² This section has been amended several times since the adoption of Proposition 73. Pertinent differences between the Proposition 73 language and the current language will be noted.

³ Under the Act, an officeholder is still considered a "candidate." (Section 82007.) Thus, the term officeholder is merely a type of candidate and therefore terms are used somewhat interchangeably in this memorandum.

- Section 85201 provided that all contributions or loans made to a candidate, or to the candidate's controlled committee, had to be deposited in a single campaign bank account.
- Section 85201(e) provided that all campaign expenditures had to be made from the appropriate campaign bank account.
- Section 85202(b)⁴ provided that contributions deposited into the campaign account must be used only for expenses associated with the election of the candidate to the specific office which the candidate intended to seek, or expenses associated with holding that office.

In essence, Proposition 73 created a closed system whereby the finances of each election were segregated from those of all other elections, to make them more easily monitored and traced by the Commission and the public.⁵ Proposition 73 prohibited any other bank accounts, including separate officeholder accounts.⁶

In order to comply with the new campaign contribution system and still have fund for officeholder purposes, officeholders began to maintain their campaign committees from the election to office as their committee for "officeholder" purposes. Since these old campaign committees were attached to a prior election, they were still permissible under the "one-bank-account" rule. Thus, while Proposition 73 sounded the death knell for separate "officeholder accounts and committees," officeholder expenses continued to be funded.

However, issues did arise under the Proposition 73 scheme as to whether given expenditures were related to the future campaign or were related to holding office. If a contributor could contribute to both the new campaign account and the officeholder account, then both contributions could be used simultaneously to benefit the officeholder's future election. In order to remedy this ambiguity, in May of 1989, the Commission adopted regulation 18525. Since the Act provided no definition of "campaign expenses" or "officeholder" expenses to assist incumbent candidates in determining from which campaign bank account particular expenses should be made, regulation 18525 specified which expenses officeholders were required to pay from the campaign bank account for a future election (i.e., campaign expenses). The officeholder

⁴ This section has been renumbered to section 89510.

⁵ As conceived, Proposition 73 also prohibited a candidate from transferring contributions directly or indirectly among his or her various campaign bank accounts.

⁶ For example, in 1999 Commission staff advised the Oakland City Attorneys' Office that the officeholder account provisions of the Oakland ordinance conflicted with requirements of state law because the Oakland ordinance permitted candidates to set up a campaign committee and account, and a separate officeholder account and legal defense fund account in connection with the same election. We advised "the one bank account rule is currently interpreted to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election." (*Hicks Advice Letter*, No. I-99-120.)

could treat all other expenses as current officeholder expenses and pay them out of either account. This approach was adopted by the Commission, rather than trying to categorize every expense as exclusively campaign-related or officeholder-related.

On September 25, 1990, the United States District Court in *Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission*⁷ (SEIU) invalidated portions of the Act added by Proposition 73, including the fiscal year contribution limitations and the transfer ban of section 85304. However, the campaign bank account sections of Proposition 73 were not affected by the court's decision. (Sections 85200 - 85202.) However, even after this 1990 court decision, the enactment and repeal of Proposition 208, and the adoption of Proposition 34, the Act continues to require a single bank account for each election.

B. Proposition 208: the Brief Return of Separate Officeholder Accounts

In 1996, Proposition 208 was adopted by the voters and superseded most of the remaining portions of Proposition 73. In connection with the new strict per election contribution limits, Proposition 208 permitted an officeholder to establish an officeholder account for expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer. (Former section 85313.)

Contributions to officeholder accounts under Proposition 208 were not considered campaign contributions. Thus, Proposition 208 could require that these funds be held in separate accounts, separate and apart from the campaign account of the officeholder, without conflicting with the "one bank account" rule of Proposition 73 which was not impacted by the litigation. However, in order to maintain a harmonious relationship between officeholder fundraising and the "one bank account" rule, Proposition 208 was strictly construed to prohibit commingling of funds and accounts. For example, when asked if an assemblymember could redesignate a campaign bank account used for a 1996 election as an officeholder bank account (permissible under pre-Proposition 208 law), the Commission advised that the assemblymember could not and had to establish a new account rather than redesignate a current account. (*Weldy* Advice Letter, No. A-96-331.)

Most of the provisions of Proposition 208 were enjoined by the federal district court in January 1998 in *California ProLife Council Political Action Committee v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282. Most of Proposition 208 was subsequently repealed when Proposition 34 was adopted by the voters in 2000.

C. Proposition 34: The End to Fundraising for Officeholder Expenses

Unlike Propositions 73 and 208, Proposition 34 introduced into the Act a new prohibition on post-election fundraising. While not explicitly prohibiting using campaign funds for officeholder purposes, section 85316 banned raising contributions after an

⁷ *Service Employees International Union, et al. v. Fair Political Practices Commission* (1992) 955 F.2d 1312, cert. den. 112 S.Ct. 3056; See also, (1990) 747 F.Supp. 580; (1989) 721 F.Supp. 1172.

election except to the extent necessary to pay net debt. The language of section 85316 was further clarified in regulations 18531.6 and 18531.61.

Under the net debt limitations, officeholders fell into one of three categories:

(1) Officeholders that had excess funds after the election and no net debt, could use those funds for officeholder expenses.

(2) Officeholders with no excess campaign funds and possibly net debt, but who were running for reelection while holding their current term. These officeholders could use their campaign funds raised for the election to that next term of office for officeholder expenses.⁸ For example, we advised in the *Wyland* Advice Letter, No. I-03-248:

“If you are elected to your third term, section 85316 prohibits you from raising funds after the election for purposes other than paying net debt. [Citation omitted.] The Act does not provide any specific method for officeholders to raise funds for officeholder expenses. However, officeholder expenses may be paid from any committee established for the office that you hold.”

(3) Finally, those officeholders with no excess campaign funds and possibly net debt that were termed out and not otherwise running for other elective offices had no funds for officeholder expenses.

In an effort to remedy this inequity, in 2006, Senate Bill 145 (Stats. 2006, Ch. 624, urgency) amended section 85316 to permit the establishment of an officeholder account by state elected officers under specific circumstances. The bill was approved by the Governor and chaptered by Secretary of State on September 29, 2006 and became effective immediately as an urgency statute on that date.

D. Senate Bill 145: The Return of Officeholder Fundraising and Separate Officeholder Bank Accounts

Currently, section 85316(a) and regulation 18531.6 and 18531.61 provide that a contribution for an election may be accepted by a candidate for elective state office after the date of the election *only* to the extent that the contribution does not exceed net debts outstanding from the election and the contribution does not otherwise exceed the applicable contribution limit for that election. However, SB 145 added a new subdivision (b) to section 85316 which authorizes an elected state officer to also accept contributions after the date of the election to the office presently held for the purpose of paying expenses associated with holding office.

⁸ Generally, elected officers preferred to hold funds collected under contribution limits for election to office, and therefore used these funds for office expenses related to a current term of office begrudgingly.

The legislative history behind the SB 145 amendment demonstrates an intent to relieve the burden on this third officeholder category -- those officeholders with no excess campaign funds and possibly net debt who were termed out and not otherwise running for other elective offices had no funds for officeholder expenses.

“While a state elected officer may be termed-out and not seeking future office, the need to pay for legitimate expenses associated with holding office remains. Under current law, termed-out elected officers are treated differently than their counterparts who can run for another term or another office because they can't raise money to pay for legitimate expenses. Non termed-out elected officials are not subject to this prohibition of fund raising since they are able to use money in their campaign committees for future office to pay for these expenses.

“This bill would permit state elected officials to accept contributions to pay for legitimate expenses associated with holding office. It would give termed-out elected officers equal and fair treatment under the law with respect to legitimate officeholder expenses. Any officer, whether or not they are termed-out, will have their officeholder contributions counted against any applicable campaign contribution limits if they seek re-election or election to a different office.” (March 16, 2005 Senate Committee on Elections, Reapportionment and Constitutional Amendments Analysis.)

SB 145 also establishes contribution limitations⁹ that apply to these officeholder committees.

Persons -- Calendar Year Limitations

- \$3,000 to an Assembly or Senate officeholder account.
- \$5,000 to the officeholder account for any statewide elected state officer other than Governor.
- \$20,000 to the Governor's officeholder account.

Limits on Officeholder Contributions -- Calendar Year Aggregate Limitations

- \$50,000 in the case of an elected state officer of the Assembly or Senate.
- \$100,000 in the case of a statewide elected state officer other than Governor.
- \$200,000 in the case of the Governor.

Finally, in an effort to prevent the use of these officeholder accounts to circumvent the contribution limits of the Act, the statute also requires in subdivision (b)(3):

⁹ The bill also requires biennial adjustment each odd-numbered year of the limits based on the Consumer Price Index.

“Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.”

The March 16, 2005 Senate Committee On Elections, Reapportionment and Constitutional Amendments Analysis states:

“3. Double-Dipping Prohibited. This measure prohibits an elected official from taking money from a single entity for officer holder expenses and for an election campaign, if they decide at some point to run for another office, if the combined amount of the contribution exceeds the contribution limits set by Proposition 34.

“For example, if a Senator took four \$3,000 contributions from Company X for his office holder account over four years, then decided to run for a statewide office other than Governor, he would have to return \$7,000 to Company X, since the maximum contribution a candidate for statewide office other than Governor is \$5,000 under Proposition 34.”

Finally, in reviewing the legislative history and statutory language, it appears clear that the officeholder-fundraising system is intended to be separate and apart from any campaign fundraising (except for the cumulation rules). Therefore, while the proposals in this packet fully implement the officeholder system established by section 85316, they do not modify the rules applicable to campaign bank accounts either before or after the candidate’s election to office. Therefore, regulation 18525 (discussed above) still controls the line between expenditures that must be made from future campaign bank accounts and those that may be made from a campaign bank account for a current term of office. And regulation 18525 sets out a different definition of what is considered an officeholder expense, in contrast to what staff has proposed to use for the “officeholder” system implemented herein. This could lead to some confusion. Thus, the Commission may also want to consider amendments to regulation 18525 when this item returns for permanent adoption in March, as set forth in the 2007 regulation calendar approved by the Commission in December 2006.¹⁰

¹⁰ An emergency regulation must be adopted as a permanent regulation within 120 days of emergency adoption. (Regulation 18312.)

III. Implementation of SB 145

In drafting these proposed regulations, staff was mindful of the intent of the legislature to deal with and rectify the dilemma of officeholders who were termed out and had no ability to raise funds for officeholder expenses because of the net debt limit of section 85316. The issues needed clarification with respect to the amendment to section 85316 can be broken into four separate general categories:

- (A) Elected state officeholder bank accounts, committees, and reporting.
- (B) Elected state officeholder contribution cumulation under section 85316(b)(4).
- (C) Winding down elected state officer officeholder committees.
- (D) Biennial adjustments.

The proposed regulations attempt to address each of these topic areas with respect to the new statutes as described below. The **decision points** are numbered sequentially throughout all of the regulations rather than restarting the numbering in each regulation and are bolded both in the regulations and this memorandum. **Staff Recommendations** appear after each decision point.

A. Elected State Officeholder Bank Accounts, Committees, and Reporting. (Regulation 18531.62.)

This regulation provides the basic rules for an officeholder to follow in order to establish and maintain an officeholder account.

1. Establishment: The proposed regulation allows for the creation of an officeholder account and permits officeholder fundraising to begin on the date that a candidate is elected to elective state office. This is consistent with a literal reading of the statute which provides “an elected state officer may accept contributions after the date of election for the purpose of paying expenses associated with holding office.”

Staff considered whether a later date might be more appropriate (such as the date the candidate is sworn in or otherwise assumes office). This would prevent an officeholder-elect from getting a contribution in advance of taking office (in essence being able to raise five years worth of officeholder contributions for a four-year term of office). However, the benefit of delaying the date of officeholder fundraising appeared to be overshadowed by the potential for confusion as officeholder elects opened officeholder accounts immediately after elections to raise officeholder funds for transition expenses. Thus, staff offers a decision point (**Decision point 1**) that would treat officeholder contributions received after election but prior to assuming office against the contribution limits applicable to the first full calendar year of the officeholder’s term in office.

Staff Recommendation, Decision point 1: *Staff recommends adoption of the limiting language in the decision point. While the bright-line rule of allowing officeholder fundraising immediately after an election seems the most practical, it should not be a reason for officials to be able to raise additional officeholder funds, in excess of the number of years that the officer will be holding office.*

The regulation also requires:

- A single segregated officerholder bank account for expenses related to holding the office. (Proposed subdivision (a).) This again is consistent with the statute.
- The officeholder funds must be held in a single bank account at a financial institution located in the State of California which is separate from any campaign bank account established for election to office. (Proposed subdivision (b).) SB 145 requires that the account be separate from campaign accounts, and the “financial institution” requirement applies to the officeholder’s other committees (campaign) as set forth in section 85201(a).
- If \$1,000 or more is received by or deposited in an officeholder account in a calendar year, the elected state officer must establish a controlled committee for the account by filing a statement of organization pursuant to section 84101. (Proposed subdivision (c)(1).) This again is consistent with the committee formation rules of the Act as applied to other controlled committees of the candidate.

2. Identification: The elected state officer’s last name, the office held, and the year of the candidate’s election to office must all be included in the name of the committee. In addition, the words “Officeholder Account” must be included as part of the committee name. The statement of organization must include the name and address of the financial institution where the committee has established the officeholder account and the account number. This “naming” requirement is generally consistent with the treatment of other committees under the Act. (Proposed subdivision (c)(2); See e.g., regulation 18534 adopted by the Commission in December 2006.)

3. Filing: The committee shall file campaign statements and reports at the same time and in the same places as any other controlled committee of the elected state officer pursuant to chapters 4 and 5 of title 9 of the Act, except that sections 85200 (statement of intent to be a candidate) and 85201 (one bank account rule for campaign bank accounts) do not apply. (Proposed subdivision (d).)

4. Use of Funds: Officeholder funds may be used for purposes related to holding the office such as: communicating with constituents, attending and sponsoring community events, travel, charitable donations, and legal and accounting fees, and any other expenses related to holding the office to which the officer was elected or related to the maintenance of the officeholder account. This general description of the types of purposes the funds may be used for is not intended to be an exclusive list but merely examples. The overriding consideration would be that the expenditure must be related to

holding the office to which the officer was elected or related to the maintenance of the officeholder account.

Officeholder funds may not be used for contributions or transfers to any state or local committee. This prohibition is expressly set forth in the new statute and restated here. In addition, the proposed regulation would further limit what is considered officeholder expenses, by prohibiting “election-related expenses” as defined in section 82015(b)(2)(C).¹¹

Finally, **decision point 2** provides optional language that officeholder funds may not be used to pay any administrative fines or civil judgments. Such payments may be made from a legal defense fund established pursuant to section 85304 or a campaign bank account established for the applicable future term of office. In the alternative, the Commission may adopt the same provision as a reminder that such payments “should” be made from a legal defense fund or a campaign bank account established for the applicable future term of office. This latter option would not prohibit the use of the officeholder funds to pay fines if they are otherwise for violations relating to holding the office. (Proposed subdivision (e).)

Staff Recommendation Decision point 2: *In practicality, this is an academic question. There is a powerful inherent incentive to use legal defense funds rather than using officeholder or campaign funds for such expenses, in that the latter funds are subject to contribution limits while legal defense funds are not. More specifically, with respect to the optional language, while the limitation is not explicit in the language of section 85316, it can be argued that this limitation comports with the idea that section 85304 should control legal expenses both during an election and while in office. However, we have not advised that those candidates with a legal defense fund and campaign accounts were barred from using campaign funds for legal expenses. Thus, prohibiting the use of officeholder funds for this purpose may be too restrictive. The enforcement division prefers the mandatory limitation.*

B. Elected State Officeholder Contribution Cumulation. (Regulation 18531.63.)

Probably the most important provision in the new statutory language (and possibly the most complicated) requires that officeholders who are campaigning for

¹¹ “Election-related activities” include, but are not limited to, the following: Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent. (ii) Communications that contain reference to the candidate’s candidacy for elective office, the candidate’s election campaign, or the candidate’s or his or her opponent’s qualifications for elective office. (iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent. (iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above. (v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate. (vi) Preparing campaign budgets. (vii) Preparing campaign finance disclosure statements. (viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

another state elective office during their term of office must cumulate officeholder contributions with contributions provided to the other campaign accounts of the officeholder. The cumulation requirement can be interpreted to affect the fundraising for both campaign purposes and for officeholder purposes. In order to clearly illustrate these effects, the regulation breaks out the application of the cumulation rule into two different subdivisions.

Subdivision (a)(1) describes the cumulation rule as applied to campaign contributions for future terms of offices. Under the proposed regulation, in order to determine if an elected state officer and specific contributor are in compliance with the campaign contribution limits of sections 85301, and 85302, any officeholder contribution (or officeholder contributions in the aggregate) received by the elected state officer during the elected state officer's term of office shall be cumulated (in full) with any other contribution from that same contributor for any other elective state office that the officeholder has filed a statement of intention to seek.

Subdivision (a)(2) clarifies that the cumulation rule is only triggered where the officerholder has filed a statement of intention to seek an elective state office during the term of office for which the officeholder contribution account and committee exist. Moreover, where the cumulation rule is applied to primary and general elections, the decision point at subdivision (a)(3) (**decision point 3** which also appears as a conforming change in subdivision (b)(2)) cumulates contributions toward the contribution limits applicable to the primary and general election, in the aggregate. In other words, since the candidate could get two contributions from the same contributor for an election to office (one in the primary and one in the general), the cumulation rules would be applied to make sure that the cumulated amount does not exceed the combined limit in the primary and the general.

You should note that the hypothetical offered in the March 16, 2005 Senate Committee On Elections, Reapportionment and Constitutional Amendments Analysis used to illustrate application of this rule does not add the primary and general election limits together in setting the threshold for the return of a contribution. It states: "For example, if a Senator took four \$3,000 contributions from Company X for his office holder account over four years, then decided to run for a statewide office other than Governor, he would have to return \$7,000 to Company X, since the maximum contribution a candidate for statewide office other than Governor is \$5,000 under Proposition 34." However, unlike the words of the statute itself, this hypothetical in the legislative analysis does not mandate the way that the Commission may interpret the language of the statute. Thus we set out this issue as a decision point for the Commission.

Staff Recommendation, Decision point 3: *Despite the hypothetical in the bill analysis, it does not appear consistent with section 85301, 85302, or 85316, as amended, to force a lower cumulative contribution threshold on an election which is half of what a candidate could actually raise for the election under sections 85301 and 85302. Staff*

recommends the aggregate of the limit for the primary and general as the threshold for purposes of section 85316.

Subdivision (a)(4) clarifies where an officeholder files more than one statement of intent during his or her term of office, the lowest limits applicable to the two offices is applied.

Subdivision (b), set out as a decision point, applies the cumulation rule against the limits applicable to the officeholder's officeholder account. It provides that the applicable contribution limit to an elected state officer's officeholder account is the lower of the following:

- The calendar year contribution limits applicable to the officeholder committee pursuant to section 85316 (aggregate and individual); or
- The lowest per election contribution limit applicable to any other elective state office that the officeholders has filed a statement of intention to seek during the officeholder's current term of office.

Subdivision (c) is based on a comment received at the interested persons meeting that contributors should be aware that making an officeholder contribution may preclude the contributor from making a campaign contribution to the officeholder's campaign committees for future office. Thus, the regulations would require a statement in solicitations:

“Under the Political Reform Act a contribution (or contributions) made to an elected officer's officeholder account count against the contributor's contribution limit on contributions to that officer's next election to the Assembly, Senate or any other elective state office that the officer intends to seek during his or her current term of office.”

Similarly, subdivision (e) provides that *inadvertent* violation of the limits due to this cumulation rule will not be a violation of the Act.

Finally, SB 145 requires that when an officeholder does find that the cumulated total of contributions exceeds a contribution limit, they must return the amount exceeding the limit to the contributor. This requirement is set out in subdivision (b) as follows:

- **Monetary Contributions.** The amount exceeding the limit shall be returned within 14 days of receipt or by the date the statement of intention to be a candidate is filed, whichever is earlier.
- **Non-Monetary Contributions.** A non-monetary contribution that exceeds the limit may be retained so long as the value in excess of the limit is reimbursed to the donor within 14 days of receipt or the date the statement of intention to be a candidate is filed, whichever is earlier.

This language was patterned after the language of regulation 18531, the general “return of excessive contribution” regulation. However, because regulation 18531 requires the return prior to deposit, which section 85316 does not, staff decided to borrow the concepts of regulation 18531 and adapt them for purposes of the new language in section 85316.

Finally, staff has inserted a decision point providing language that would exempt an officeholder from this return requirement if the officeholder had already expended all their officeholder funds, so long as they did not intend to raise future officeholder funds for that office. This rule is not explicit in the statutory language, however a literal reading of the statute seemed to contradict the overall purposes of the Act by requiring further fundraising to return contributions, creating greater opportunity for influence over the officeholder. On the other hand, the exception could encourage and reward officeholders who spend as much of their officeholder funds as they can as early as possible without consideration of future campaign limits. Thus, staff has provided this policy decision to the Commission as a **decision point (Decision point 4)**.

Staff Recommendation, Decision point 4: *Staff has no recommendation on this matter. This is a question of which of the two policy arguments is deemed overriding by the Commission and therefore is better left to the Commission.*

C. Winding Down Elected State Officer Officeholder Committees. (Regulation 18531.64.)

1. Cut-off Point for Officeholder Fundraising: Similar to regulation 18531.62 which establishes when officeholder fundraising may begin, regulation 18531.64 sets forth when the fundraising for officeholder purposes must end. No contributions may be accepted for officeholder purposes after the date the term of office for which the committee was formed ends or the officeholder leaves that office, whichever is earlier. This is a common sense cut-off point since the officer will no longer be holding office. Note that this is the cut-off rule for fundraising, the regulation does provide a post officeholder period (30 days) to wind down the committee.

2. Termination of Officeholder Committees: Officeholder committees and accounts must be terminated 30 days from the date the officer’s term of office ends or the officer leaves that office, whichever is earlier. Of course the Commission can choose any fixed number of days it deems appropriate (**Decision point 5**).

At the interested persons meeting, it was suggested that longer periods for termination be permitted, similar to those that apply to campaign committees. However, the complexity of the termination procedures applicable to termination of campaign committees seemed to argue against applying these rules. For example, campaign committees may be open from 9 to 24 months after the earliest of the date the officeholder leaves office or his or her current term of office ends. In addition, the rules

for termination of campaign committees allow for extensions for cause, such as paying off campaign debt.

Staff Recommendation, Decision point 5: *Staff recommends the 30 days as a clear bright line. Unlike campaign committees, officeholder committee should be much easier to wind down.*

3. Redesignation of Officeholder Committees: Prior to the required date of termination, an individual currently holding elective office may redesignate the officeholder account (and any remaining funds therein) for a future term to the same elective office by amending the Statement of Organization for the committee. The funds remaining in the original account may be carried over without attribution. Note that this proposed redesignation rule only applies to future terms in the same elective office (i.e. Assembly 2006 and the second term in the same seat, Assembly 2008.)

4. Disposition of Left-Over Officeholder Funds When Redesignation not Utilized: Officeholder funds left over (and not carried over by redesignation of the committee) may be used only for the following purposes:

- (1) The payment of outstanding elected officer's officeholder expenses.
- (2) The repayment of contributions to contributors to the officer's officeholder account.
- (3) Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the elected state officer, any member of his or her immediate family, or his or her committee treasurer.
- (4) The payment for professional services reasonably required by the officeholder committee to assist in the performance of its administrative functions.

The uses are restatements of uses applicable to surplus campaign funds, with minor changes to conform to the officeholder nature of the funds.

D. Biennial adjustments. (Regulation 18544).

Section 85316(b) requires that beginning the year 2006, the limits applicable to officeholder accounts will be adjusted January of every odd-numbered year. The legislative history states that the limits applicable to officeholder committees are adjusted every two years, just as proposition 34's limits.¹²

¹² The legislative analysis of the senate Committee on Elections, Reapportionment, and Constitutional amendments states that the limits set forth in the bill are identical to the proposition 34 contribution limits at the time Proposition 34 was adopted by the voters. The difference in the amounts currently is due to the periodic adjustments already performed on the campaign contribution limits.

Regulation 18544 has been amended to include periodic adjustments to the officeholder limits, using the same formula but with the current dates. Even though the urgency statute was enacted in 2006 which would mean the first adjustment would be in 2007, since the base year for the CPI adjustment is 2006, the net change is zero, so there is no need for an adjustment. Thus, the first significant increase or decrease will be in 2009.

IV. Staff Recommendation

Since the legislation was passed as urgency legislation, staff is present all of these regulations and amendments for emergency adoption. This would mean that the statute would be implemented by the regulations immediately. Staff would return with permanent regulations in March. These regulations may be fine-tuned based on the experience we receive during the emergency period.

Appendix 1. Regs. 18531.62, 18531.63, 18531.64

Appendix 2. Reg. 18544

Appendix 3. SB 145

Appendix 4. Letter from Shirley Grindle (w/o attachments)